

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

TONY SMITH,

Petitioner,

12 Civ. 8131 (JGK)

- against -

MEMORANDUM OPINION
AND ORDER

CITY OF NEW YORK, ET AL.,

Respondent.

JOHN G. KOELTL, District Judge:

The plaintiff, Troy Smith, brought this action against the City of New York, pursuant to 42 U.S.C. § 1983, alleging that he was subjected to an unlawful arrest, an unlawful strip search, and unconstitutional conditions of confinement in the period 2007-2008. The defendant has now moved to dismiss the Complaint pursuant to Fed. R. Civ. P. 12(b)(6) because the Complaint is barred by the statute of limitations.

The statute of limitations for a claim under Section 1983 in New York is three years. See Owens v. Okure, 488 U.S. 235 (1989). The Complaint in this action is dated December 24, 2012, well after the statute of limitations had expired. Therefore, the Complaint should be dismissed.

The plaintiff argues that he was a member of a class action that obtained favorable judgment and apparently argues that he should receive part of that settlement. The case he is apparently referring to is McBean v. City of New York, 02 Civ.

5426 (S.D.N.Y). The time for participating in the McBean settlement has passed, but the Court will refer the plaintiff's Complaint to plaintiffs' counsel in the McBean case, so that counsel can respond directly to the plaintiff. The existence of the McBean action, and any participation of the plaintiff in that action, does not provide the plaintiff with a right to recover in this action.

The motion to dismiss is **granted**. **The Clerk is directed to close this action and to close all pending motions.**

SO ORDERED.

Dated: New York, New York
January 20, 2014

_____/s/_____
John G. Koeltl
United States District Judge